

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

February 23, 1999

**IN RE: COUNCE NATURAL GAS COMPANY)
 COMPLIANCE AUDIT REPORT) DOCKET NO. : 98-00022**

ORDER APPROVING SETTLEMENT AGREEMENT

On February 2, 1999, at a regularly scheduled Authority Conference, this matter came before the Tennessee Regulatory Authority (the "Authority") for consideration of the parties' Settlement Agreement and the Hearing Officer's Report and Recommendation with respect thereto.

On January 19, 1998, the Gas, Water & Electric Division (the "Authority's Staff") conducted its annual on-site audit of Counce. Subsequent thereto, the Authority's Staff issued to Counce its preliminary Compliance Audit Report, and Counce responded thereto. The preliminary compliance audit report was modified to reflect the Company's responses and a final compliance audit report (the "Report") resulted therefrom. The Report was filed with the Authority on March 13, 1998.

On March 24, 1998, at a regularly scheduled Authority Conference, the Authority's Staff orally presented the Report to the Authority for consideration and approval. The Report contained a finding by the Authority's Staff that Counce overcollected its gas costs during the period including February 1, 1996 through September 30, 1997, in the amount of Sixty-Nine Thousand Four Hundred Fifty-Five and 80/100 (\$69,455.80) Dollars, which included accrued

interest thereon calculated through September 30, 1997.¹ Pursuant to Chapter 1220-4-7 of the Authority's Rules, the Authority's Staff recommended to the Authority that Counce be required to refund over a three (3) year period, beginning with Counce's June 1998 billing, the principal amounts overcollected, accrued interest thereon calculated through September 30, 1997, and interest thereon as it continued to accrue (collectively the "Overcollected Amounts"). In its Response to the Report, Counce objected to the refund requirement, arguing:

... Counce did not overcharge customers. To the contrary, it charged them well below the rates that would have been necessary to produce a fair return. Counce erred, however, in how it allocated its charges. The company overcharged customers for "gas costs" (the company's wholesale cost of gas) but charged far less than what was needed to cover the company's other expenses.

Counce's Response, filed March 20, 1998, p. 1. Additionally, Counce argued that the refund requirement would jeopardize Counce's ability to earn a just and reasonable rate of return during the period of the refund and could jeopardize the quality of service to its customers during that same period. Id. Counce requested a hearing within the meaning of Tenn. Code Ann. § 65-2-108.

At the regularly scheduled Authority Conference held on July 7, 1998, the Authority appointed a pre-hearing officer to hear any preliminary matters arising and to set a procedural schedule.² By notice dated July 10, 1998, the pre-hearing officer scheduled a pre-hearing conference for July 15, 1998. At that conference, the pre-hearing officer ruled that a hearing was necessary, and filed his Report and Recommendation of Hearing Officer on July 15, 1998 Pre-Hearing Conference to that effect.

¹ The amounts overcollected by Counce during the period including February 1, 1996 through September 30, 1997 accumulated additional interest in the amount of Six Thousand One Hundred Thirty-Nine and 26/100 (\$6,139.26) Dollars for the period October 1, 1997 through September 30, 1998.

² H. Edward Phillips presided at the Pre-Hearing Conference.

By letter dated August 17, 1998, the Authority's Staff requested that the pre-hearing officer reconsider his recommendation and provided legal arguments in support of that request. On August 18, 1998, the pre-hearing officer convened an informal status conference to discuss the August 17, 1998 filing. That informal conference resulted in a filing schedule for reply briefs on the issue. By order entered August 20, 1998, the pre-hearing officer granted the Authority's Staff's request for reconsideration and scheduled oral arguments. On September 21, 1998, oral arguments were had before the pre-hearing officer who concluded that a hearing should proceed and established a schedule for the filing of testimony.

On December 7, 1998, the parties submitted a Settlement Agreement for the Authority's consideration and approval. The Settlement Agreement, dated November 30, 1998, is attached hereto as Exhibit A, and its terms and conditions are specified therein. On January 28, 1999, the Pre-Hearing Officer filed his Report and Recommendation concerning the Settlement Agreement.

Having considered relevant portions of the record, the Authority unanimously approved the Settlement Agreement at its regularly scheduled Authority Conference held on February 2, 1999.

IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement is approved;
2. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order;

3. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition For Review in the Tennessee Court of Appeals, Middle District, within sixty (60) days of the date of this Order.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST: 
EXECUTIVE SECRETARY

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of November 30, 1998, is made and entered into between Counce Natural Gas Company, P.O. Box 736, West Point, MS 39773 (hereinafter "Counce"), and the Tennessee Regulatory Authority's Gas, Water & Electric Division (hereinafter the "Authority's Staff").

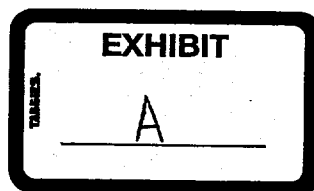
WITNESSETH:

WHEREAS, on March 24, 1998, at a regularly scheduled Authority Conference, the Authority's Staff presented Counce's Compliance Audit Report (the "Report") to the Authority for consideration and approval;

WHEREAS, the Report, attached hereto and incorporated herein by this reference, contained, among other things, a finding by the Authority's Staff that Counce overcollected its gas costs during the period including February 1, 1996 through September 30, 1997, in the amount of Sixty-Nine Thousand Four Hundred Fifty-Five and 80/100 (\$69,455.80) Dollars, which includes accrued interest thereon calculated through September 30, 1997;

WHEREAS, the amounts overcollected by Counce during the period including February 1, 1996 through September 30, 1997 have accumulated additional interest in the amount of Six Thousand One Hundred Thirty-Nine and 26/100 (\$6,139.26) Dollars for the period October 1, 1997 through September 30, 1998;

WHEREAS, pursuant to Chapter 1220-4-7-01 et seq. of the Authority's Rules, the Authority's Staff recommended to the Authority that Counce be required to refund over a three (3) year period, beginning with Counce's June 1998 billing, the principal amounts overcollected, accrued interest thereon calculated through September 30, 1997, and interest thereon as it continues to accrue (collectively the "Overcollected Amounts");



WHEREAS, Counce objected to the recommendation of the Authority's Staff that Counce be ordered to refund the Overcollected Amounts, and Counce requested a hearing within the meaning of Tenn. Code Ann. § 65-2-108;

WHEREAS, the Authority has tentatively scheduled a hearing to make a final determination on the scope of Counce's obligation to refund the Overcollected Amounts; however, the parties acknowledge that the Overcollected Amounts represent a relatively large sum for Counce to fully refund over a three (3) year period, given Counce's size and financial condition;

WHEREAS, the Authority's strict enforcement of Chapter 1220-4-7-01 et seq. of the Authority's Rules could jeopardize Counce's ability to continue to provide service to its customers, all of whom have come to rely upon Counce for the provision of natural gas service and who have no currently available alternative source for natural gas service; and

WHEREAS, the issue of Counce's obligation to refund the Overcollected Amounts can be resolved by agreement of the parties on the terms and conditions provided herein.

NOW THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. Counce agrees and acknowledges that the recitals contained herein are true and accurate.
2. Counce agrees and acknowledges that the numerical calculations of the Authority's Staff as contained in the Report are accurate and Counce waives any present or future right to contest the same.
3. Counce agrees and acknowledges that the Report includes only the audit findings of the Authority's Staff for the period including February 1, 1996 through September 30, 1997, and that the Report does not include any audit findings for any period after September 30, 1997,

as the Authority's Staff has not yet undertaken an audit of Counce for any period post-September 30, 1997. Thus, notwithstanding anything herein contained, this Settlement Agreement does not in any way limit the Authority's Staff in their ability to audit or make recommendations to the Authority concerning any audit findings for any period after September 30, 1997, nor does this Settlement Agreement limit the Authority's ability to impose future refunding requirements as it deems necessary in connection with any audit findings of the Authority's Staff for any period after September 30, 1997.

4. Counce and the Authority's Staff agree that, upon the Order of the Authority, Counce shall not be required to refund any of the Overcollected Amounts, including interest thereon; provided, and on the express condition, that Counce does not either petition for a rate increase, or take any action that would have the effect of seeking a rate increase, before July 21, 2001, which date represents three (3) years from the date on which the Authority approved Counce's last petition for a rate increase (the "Forbearance Period").

5. Counce and the Authority's Staff agree that if, and only if, an unforeseen event occurs during the Forbearance Period that either prevents or substantially prevents the successful delivery of Counce's natural gas service to its customers in Hardin County, Tennessee for such a period as to cause substantial financial injury to Counce necessitating additional revenue for Counce's continued operation, then Counce shall have the right to petition the Authority for a waiver of the limitations imposed by this Settlement Agreement, upon terms and conditions acceptable to the Authority. In such case, Counce shall bear the burden of demonstrating that the requisite unforeseen event has occurred, the Authority shall establish the terms and conditions upon which any waiver would be granted, and the Authority shall be under no obligation to grant Counce's petition but may do so if the Authority deems the same to be appropriate; provided that

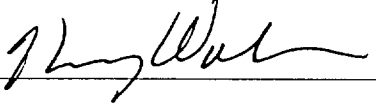
the Authority shall simultaneously determine whether and/or under what circumstances should Counce become re-obligated to refund all or any portion of the Overcollected Amounts.

6. Counce acknowledges that it has voluntarily executed this Settlement Agreement and has utilized its own accounting and legal resources in assessing the benefits and risks contained herein.

7. Counce and the Authority's Staff hereby acknowledge that this Settlement Agreement is expressly subject to the approval of the Tennessee Regulatory Authority and shall be governed by and construed in accordance with laws applicable to contracts executed and performed within the state of Tennessee.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of the date first written above.

COUNCE NATURAL GAS COMPANY

By: 

Title: att for Counce Gas

THE AUTHORITY'S STAFF

By: 

Title: FINANCIAL MANAGER